In the High Court of Punjab and Haryana at Chandigarh.

RSA No.1548 of 1982

Date of decision: 03.10.2007.

Gangu Ram ... Appellant

Versus

Nand Lal (deceased) represented by LRs ...Respondents.

Present: Mr.Sudeep Mahajan, Advocate, for the appellant.
Respondents ex-parte.

PERMOD KOHLI, J. (Oral):

This is defendant's Regular Second Appeal against the concurrent findings of fact recorded by learned Courts below.

The respondents are absent. They are, therefore, proceeded ex-parte and this appeal is, accordingly, heard in the absence of the respondents.

According to the learned counsel for the appellant, the following substantial questions of law arise in this appeal:-

(1) Whether the appellant-defendant can acquire status of a co-sharer on the basis of an agreement to sell where the possession is allegedly taken over?

(2) Whether levelling of the land amounts to reclaiming the agricultural land.

It may be useful to briefly mention the factual background.

The appellant-defendant purchased the land measuring 9 kanals 8 Marlas from Bela Ram, predecessor-in-interest of respondent Nos.2 and 3 (Defendant No.2 in the suit). Respondent No.1 Nand Lal (now dead) filed a suit for possession by way of pre-emption claiming himself to be co-sharer in the agricultural land measuring 12 kanals 15 Marlas situated in village Razapur, Tehsil Panipat, District Karnal to the extent of half share. On the basis of his status as a co-sharer, he claimed a preferential right to purchase in respect to land purchased by the appellant vide sale deed dated 04.05.1979 for a consideration of Rs.3500/-.

The suit was resisted by the present appellant, firstly, on the ground that he was co-sharer in the land and thus, had also right of pre-emption, secondly, that he had reclaimed the land after sale and, thus, no pre-emptory right is exercisable against him.

On the pleadings of the parties, the learned trial Court framed the following issues:-

(1) Whether the plaintiff has superior

right to pre-empt the sale in question as against the vendee? OPP

(2) Whether the sale consideration of Rs.3500/- as shown in the sale deed was not fixed in good faith and actually paid? OPP

(3) If issue No.2 is not proved, what was the market value of the land in suit at the time of sale? OP Parties.

(4) Whether the defendant-vendee is entitled to recover any amount in respect of expenses on stamp and registration? OPD

(5) Whether the land in dispute was Banjar at the time of sale and it has been reclaimed by vendee-before filing of the present suit? If so its effect? OPD

(6) Relief.

While deciding issue No.1, the trial Court returned a

finding that the plaintiff is shown as a co-sharer in respect to half share in the land belonging to Bela Ram vendor in the jamabandi for the year 1978-79 and there is presumption of correctness of the jambandi. The learned trial Court also held that there is no cogent evidence whether the possession of the suit land was delivered to the defendant-vendee under the sale prior to the execution of the sale deed. According to the learned trial Court, plaintiff having established that he is a co-sharer and no notice of the sale having been given to him, he has a right of pre-emption. Issue No.1 was accordingly decided in favour of plaintiff. While considering issue No.5, the learned trial Court referred to entries in khasra girdawaris for Kharif 1979 to Kharif 1981. It is noticed that 5 kanals 4 marls land out of killa No.25, 2 kanals land out of killa No.21/2 and 4 kanals land out of killa No.5 was banjar kadim thur in Kharif 1979. 2 kanals land out of killa No.25 and 2 kanals land out of killa No.21/2 is shown under crop of paddy, while 3 kanals 7 marlas land out of killa No.5 is shown as vacant in Kharif 1979. It also found that in Kharif 1981, 5 kanals 4 marls land out of killa No.25, 2 kanals land out of killa No.21/2 and 4 kanals land out of killa No.5 is shown as banjar kadim thur and the remaining land is shown as uncultivable. These findings were returned on the basis of the entries in the revenue record as also taking into consideration the statement of the defendant and one Kishan Chand who appeared as his witness and stated before the trial Court that he had improved the land of Gangu Ram for which he was paid Rs.300/-. He also stated that

another amount of Rs.300/- was received by him for cultivation but he did not cultivate the land at any time though the same has been levelled by him. On the basis of the entire evidence, the learned trial Court found that the position of the land continued to remain the same as it was at the time of the sale and it has not been put to cultivation. It, accordingly, opined that the land was waste land at the time of the sale, institution of the suit and it still remains a waste land and the same has not been reclaimed by the vendee-defendant after the sale. In the ultimate conclusion, the suit of the plaintiff for possession by way of pre-emption was decreed subject to deposit of the sale consideration and expenses etc. as directed.

Aggrieved of the judgment and decree of the learned trial Court dated 28.11.1981, defendant No.1 (appellant herein) filed an appeal before the learned Additional District Judge, Karnal. The learned Lower Appellate Court concurred with the findings of fact recorded by the trial Court and dismissed the appeal.

During the hearing of the appeal before the learned Lower Appellate Court, the question of limitation was also raised.

I have heard the learned counsel for the appellant at length and perused the record of the case.

The main argument of the learned counsel for the appellant is that the plaintiff claimed his right as a co-sharer on the basis of the

sale deed whereby he claims to have purchased the land, but the said sale deed has not been produced in the Court. According to the learned counsel, the entries in the jamabandi do not confer any right upon the plaintiff as a co-sharer as he has to prove and establish that he purchased the property and became co-sharer prior to the sale in favour of the present appellant i.e. on 04.05.1979. It is urged that since jamabandis do not demonstrate the date of acquiring the status of co-sharer and sale deed having not been proved or produced, adverse inference is to be drawn against the plaintiff and presumption attached to the revenue record will not be available to him.

I have gone through the plaint. In paragraph 1 of the plaint, the plaintiff has specifically alleged that he has purchased the property vide registered sale deed dated 29.03.1979 for a consideration of Rs.4500/- from Lachhman etc. It is also mentioned that a mutation No.706 has also been sanctioned in his favour. Hence, he has become co-sharer in the Khata in question with defendant No.2, Bela Ram. It is admitted position on record that neither the sale deed nor the mutation, reference to which has been given in para no.1 of the plaint, have been produced in Court. However, the defendant-appellant in his written statement has not denied the averments regarding the sale and/or mutation. It may be relevant to reproduce paragraph no.1 of the plaint and that of the written statement:-

> "Plaint: That the plff. was the co-owner in joint possession in khata no.139/165, of

land in which 18 K-15 M. land as fully detailed in the heading above, is entered with all the rights appurtenant there to situated at village Razapur,Tehsil Panipat alongwith vendor defendant No.2 to the extent of ½ share each. The plff. Purchased the such share in the land in suit vide regd. sale deed dt. 29.3.1979 for Rs.4500/-. From Shri Lachhman etc. ss/o Shri Mangha Ram, the previous co-sharers in the khata in question with defendant no.2 Shri Bela Ram. The mutation no.706 has been sanctioned in favour of the plaintiff regarding the said suit land. Hence, the plff. has become co-sharer in the khata in question with defendant no.2."

"Written statement of defendant No.1:

That the suit is bad on account of partial pre-emption and the suit is likely to be dismissed."

"Written statement of defendant No.2:

> That in reply to para no.1 of the plaint, it is admitted to this extent that defendant No.2 Shri Bela Ram was the owner in possession of the suit land. The rest of this para is denied due to want of knowledge."

From the written statement, it is evident that while taking his own defence regarding the acquisition of property by defendant No.1, he has denied rest of the averments of the plaint for want of knowledge. It is settled law of pleadings that such a denial is no denial in the eyes of law and is deemed to be an admission. Rules 3, 4 and 5 of Order 8 of the Code of Civil Procedure require a defendant to specifically deny the allegations of fact and evasive denial will be deemed to be an admission. In the present case, what to say of specific denial, as a matter of fact, there is no denial on record. Denial for want of knowledge is no denial. Hence, claim made with regard to purchase of land by virtue of sale deed dated 29.03.1979 and consequential mutation are deemed to be admitted. Under these circumstances, no adverse inference can be drawn against the plaintiff. This admission is followed by an entry in the jamabandi for the year 1978-79. It has been vehemently argued on behalf of the appellant that there is no material on record to prove that the property was purchased by the plaintiff to become co-sharer prior to 04.05.1979.

From the rules, it appears that the period for recording jamabandi is between end of Rabi and before the beginning of Kharif, that means from November to March. There is admission of execution of sale deed dated 28.03.1979 followed by an entry in the revenue record i.e. jamabandi and mutation. This clearly indicate that entry in the jamabandi in favour of the plaintiff is on the basis of the sale deed and mutation mentioned in paragraph no.1 of the plaint. There is presumption in favour of the revenue entries, though every presumption is rebuttable. No material or evidence has been led by the present appellant-defendant to dis-prove the entries in the revenue record (jamabandi). Hence, the findings of the learned trial Court affirmed by Lower Appellate Court that the plaintiff has established that he is a co-sharer, requires no interference.

It has been argued that the suit was barred by time. Reference is made to the judgment of the learned trial Court, where the date of institution of the suit is mentioned as 05.05.1980. However, from the original record, it is found that the plaint was presented on 03.05.1980 and the sale deed being dated 04.05.1979, the suit was within one year i.e. prescribed period of limitation.

The next contention of the learned counsel for the appellant is that the appellant has acquired the status of a co-sharer on the basis of the agreement to sell. The agreement to sell relied upon is

not on record. As a matter of fact, no such agreement to sell was ever produced. Learned counsel relied upon the stipulation in the sale deed dated 04.05.1979, wherein it is mentioned that possession has been delivered to the purchaser and out of total consideration, a sum of Rs.1200/- has been received as advance and the balance amount of Rs.2300/- shall be paid at the time of registry. It is, accordingly, argued that this stipulation refers to an agreement to sell between the parties and also indicates that the possession was delivered to the vendee (defendant) Gangu Ram prior to the sale deed.

I am unable to accept this submission. The stipulation in sale deed only refers to payment of advance of Rs.1200/- and promise to pay the balance amount at the time of registration. No date of payment of advance amount has been mentioned. As regards the question of possession is concerned, the averment that possession has been delivered and the vendee has entered into possession, refers to delivery of possession at the time of execution of sale deed. Even if it is presumed for the sake of argument that this refers to a past period, no date whatsoever has been indicated so as to draw an inference or to find out whether this date is prior to 29.03.1979 or thereafter. Apart from the above, a person can become co-sharer only on acquiring title in the property. Even if there was any such agreement to sell, it does not confer any title upon the vendee. He can acquire status of a co-sharer on acquiring title in the property and, thus, the claim of the defendant-appellant that he had become the co-sharer on the strength of

agreement to sell, is without any basis. This submission, accordingly, fails.

The last argument raised by the learned counsel for the appellant is that he had re-claimed the property after sale. According to him, under Section 5 of the Punjab Pre-emption Act, 1913, right of pre-emption is not available with respect to land which has been reclaimed by the vendee after sale. Section 5 of the Act aforesaid, reads as under:-

> "5. No right of premption in certain cases:- No right of pre-emption shall exist in respect of-
>
> (a) the sale of or foreclosure of a right to redeem-
>
> (i) a shop, serai or katra;
>
> (ii) a dharmsala, mosque or other similar building; or
>
> (b) the sale of agricultural land being waste land reclaimed by the vendee.

> Explanation:- For the purposes of this section the expression "waste land" means land recorded as bagnar of any kind in revenue records and such ghair mumkin lands as are reclaimable."

The trial Court framed a specific issue being issue No.5 and held that the defendant had not reclaimed the property after sale in his favour. It refers to evidence of Gangu Ram defendant and Kishan Chand, who appeared as witnesses on his behalf. He has stated that he has charged Rs.300/- from defendant Gangu Ram for levelling of the land. However,he has specifically made a statement that the land was never put to cultivation. It is the admitted case of the parties that at the time of sale, it was a banjar kadim land. Such a land is basically agricultural land, but abandoned for agricultural purpose for quite some time. The expression reclaimed by any stretch of imagination can not mean levelling. Simple levelling can be for any purpose and unless it is re-used as an agricultural land, it cannot be said that the waste land has been reclaimed for agricultural purpose. Both the learned Court below have concurrently held that the land has not been reclaimed for agricultural purpose. I do not find any valid ground to interfere in the findings of fact recorded by the learned Courts below. The questions of law mentioned above, have also been answered against the appellant. There is no merit in the appeal and the same is

hereby dismissed with no order to costs.

03.10.2007. (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to Reporter: YES/NO